

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Accountability
2 Committee

3 Representative Payne offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 1192-1315 and insert:

7 Section 22. Paragraphs (c) and (d) of subsection (1) and
8 subsection (2) of section 320.27, Florida Statutes, are amended
9 to read:

10 320.27 Motor vehicle dealers.—

11 (1) DEFINITIONS.—The following words, terms, and phrases
12 when used in this section have the meanings respectively
13 ascribed to them in this subsection, except where the context
14 clearly indicates a different meaning:

15 (c) "Motor vehicle dealer" means any person engaged in the
16 business of buying, selling, or dealing in motor vehicles or

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17 offering or displaying motor vehicles for sale at wholesale or
18 retail, or who may service and repair motor vehicles pursuant to
19 an agreement as defined in s. 320.60(1). Any person who buys,
20 sells, or deals in three or more motor vehicles in any 12-month
21 period or who offers or displays for sale three or more motor
22 vehicles in any 12-month period shall be prima facie presumed to
23 be a motor vehicle dealer engaged in such business. Any person
24 who engages in any of the following activities shall be deemed
25 to be dealing in motor vehicles: possessing, storing, or
26 displaying motor vehicles for retail sale; advertising motor
27 vehicles for retail sale; negotiating with consumers regarding
28 the terms of sale for a motor vehicle; providing test drives of
29 motor vehicles offered for sale; or delivering or arranging for
30 the delivery of a motor vehicle in conjunction with the sale of
31 such motor vehicle. The terms "selling" and "sale" include
32 lease-purchase transactions. A motor vehicle dealer may, at
33 retail or wholesale, sell a recreational vehicle as described in
34 s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale
35 of a motor vehicle, provided such acquisition is incidental to
36 the principal business of being a motor vehicle dealer. However,
37 a motor vehicle dealer may not buy a recreational vehicle for
38 the purpose of resale unless licensed as a recreational vehicle
39 dealer pursuant to s. 320.771. A motor vehicle dealer may apply
40 for a certificate of title to a motor vehicle required to be
41 registered under s. 320.08(2)(b), (c), and (d), using a

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42 manufacturer's statement of origin as permitted by s. 319.23(1),
43 only if such dealer is authorized by a franchised agreement as
44 defined in s. 320.60(1), to buy, sell, or deal in such vehicle
45 and is authorized by such agreement to perform delivery and
46 preparation obligations and warranty defect adjustments on the
47 motor vehicle; provided this limitation shall not apply to
48 recreational vehicles, van conversions, or any other motor
49 vehicle manufactured on a truck chassis. The transfer of a motor
50 vehicle by a dealer not meeting these qualifications shall be
51 titled as a used vehicle. The classifications of motor vehicle
52 dealers are defined as follows:

53 1. "Franchised motor vehicle dealer" means any person who
54 engages in the business of repairing, servicing, buying,
55 selling, or dealing in motor vehicles pursuant to an agreement
56 as defined in s. 320.60(1).

57 2. "Independent motor vehicle dealer" means any person
58 other than a franchised or wholesale motor vehicle dealer who
59 engages in the business of buying, selling, or dealing in motor
60 vehicles, and who may service and repair motor vehicles.

61 3. "Wholesale motor vehicle dealer" means any person who
62 engages exclusively in the business of buying, selling, or
63 dealing in motor vehicles at wholesale or with motor vehicle
64 auctions. Such person shall be licensed to do business in this
65 state, shall not sell or auction a vehicle to any person who is
66 not a licensed dealer, and shall not have the privilege of the

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67 use of dealer license plates. Any person who buys, sells, or
68 deals in motor vehicles at wholesale or with motor vehicle
69 auctions on behalf of a licensed motor vehicle dealer and as a
70 bona fide employee of such licensed motor vehicle dealer is not
71 required to be licensed as a wholesale motor vehicle dealer. In
72 such cases it shall be prima facie presumed that a bona fide
73 employer-employee relationship exists. A wholesale motor vehicle
74 dealer shall be exempt from the display provisions of this
75 section but shall maintain an office wherein records are kept in
76 order that those records may be inspected.

77 4. "Motor vehicle auction" means any person offering motor
78 vehicles or recreational vehicles for sale to the highest bidder
79 where buyers are licensed motor vehicle dealers. Such person
80 shall not sell a vehicle to anyone other than a licensed motor
81 vehicle dealer.

82 5. "Salvage motor vehicle dealer" means any person who
83 engages in the business of acquiring salvaged or wrecked motor
84 vehicles for the purpose of reselling them and their parts.

85
86 Notwithstanding anything in this subsection to the contrary, the
87 term "motor vehicle dealer" does not include persons not engaged
88 in the purchase or sale of motor vehicles as a business who are
89 disposing of vehicles acquired for their own use or for use in
90 their business or acquired by foreclosure or by operation of
91 law, provided such vehicles are acquired and sold in good faith

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92 and not for the purpose of avoiding the provisions of this law;
93 persons engaged in the business of manufacturing, selling, or
94 offering or displaying for sale at wholesale or retail no more
95 than 25 trailers in a 12-month period; public officers while
96 performing their official duties; receivers; trustees,
97 administrators, executors, guardians, or other persons appointed
98 by, or acting under the judgment or order of, any court; banks,
99 finance companies, or other loan agencies that acquire motor
100 vehicles as an incident to their regular business; motor vehicle
101 brokers; persons whose sole dealing in motor vehicles is owning
102 a publication in, or hosting a website on, which licensed motor
103 vehicle dealers display vehicles for sale; and motor vehicle
104 rental and leasing companies that sell motor vehicles to motor
105 vehicle dealers licensed under this section. Vehicles owned
106 under circumstances described in this paragraph may be disposed
107 of at retail, wholesale, or auction, unless otherwise
108 restricted. A manufacturer of fire trucks, ambulances, or school
109 buses may sell such vehicles directly to governmental agencies
110 or to persons who contract to perform or provide firefighting,
111 ambulance, or school transportation services exclusively to
112 governmental agencies without processing such sales through
113 dealers if such fire trucks, ambulances, school buses, or
114 similar vehicles are not presently available through motor
115 vehicle dealers licensed by the department.

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116 (d) "Motor vehicle broker" means any person engaged in the
117 business of, or who holds himself or herself out through
118 solicitation, advertisement, or otherwise as being in the
119 business of assisting ~~offering to procure or procuring motor~~
120 ~~vehicles for the general public~~ in purchasing or leasing a motor
121 vehicle from a licensed motor vehicle dealer, or who holds
122 ~~himself or herself out through solicitation, advertisement, or~~
123 ~~otherwise as one who offers to procure or procures motor~~
124 ~~vehicles for the general public,~~ and who does not deal in motor
125 vehicles as delineated in paragraph(c) ~~store, display, or take~~
126 ~~ownership of any vehicles for the purpose of selling such~~
127 vehicles. Any advertisement or solicitation by a motor vehicle
128 broker must include that the broker is receiving a fee and must
129 clearly state that the person is not a licensed motor vehicle
130 dealer.

131 (2) LICENSE REQUIRED.—No person shall engage in business
132 as, serve in the capacity of, or act as a motor vehicle dealer
133 in this state without first obtaining a license therefor in the
134 appropriate classification as provided in this section. With the
135 exception of transactions with motor vehicle auctions, no person
136 other than a licensed motor vehicle dealer may advertise for
137 sale any motor vehicle belonging to another party unless as a
138 direct result of a bona fide legal proceeding, court order,
139 settlement of an estate, or by operation of law. However, owners
140 of motor vehicles titled in their names may advertise and offer

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141 vehicles for sale on their own behalf. It shall be unlawful for
 142 a licensed motor vehicle dealer to allow any person other than a
 143 bona fide employee to use the motor vehicle dealer license for
 144 the purpose of acting in the capacity of or conducting motor
 145 vehicle sales transactions as a motor vehicle dealer. Any person
 146 acting ~~selling or offering a motor vehicle for sale~~ in violation
 147 of the licensing requirements of this subsection, or who
 148 misrepresents to any person its relationship with any
 149 manufacturer, importer, or distributor, in addition to the
 150 penalties provided herein, shall be deemed to have committed
 151 ~~guilty of~~ an unfair and deceptive trade practice ~~as defined in~~
 152 violation of part II of chapter 501 and shall be subject to the
 153 provisions of subsections (8) and (9).

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T I T L E A M E N D M E N T

158

Remove lines 97-99 and insert:

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such plates; amending s. 320.27, F.S.; revising the definitions

160

of "motor vehicle dealer" and "motor vehicle broker"; revising

161

provisions regarding licensing requirements; amending s.